

**TENNESSEE BOARD OF OPTOMETRY  
MINUTES**

**Date:** August 20, 2004

**Time:** 10:00 a.m., CST

**Location:** Marriott Hotel  
Chattanooga, TN

**Members Present:** Terry Hendrickson, O.D., Chair  
Scott Spivey, O.D., Vice Chair  
Eddie Abernathy, O.D.  
Jeff Foster, O.D.

**Members Absent:** Jerry Richt, O.D., Secretary  
Brian Browder

**Staff Present:** Robbie Bell, Director  
Barbara Maxwell, Administrative Director  
Nicole Armstrong, Advisory Attorney

Dr. Hendrickson, chair, called the meeting to order at 10:04 a.m. A sufficient number of board members were present to constitute a quorum.

Dr. Hendrickson expressed the board's appreciation of having Ms. Bell, Ms. Armstrong and Ms. Maxwell conduct the meeting in conjunction with the Tennessee Optometry Association Annual Meeting in Chattanooga.

**Review Minutes**

Upon review of the May 5, 2004 minutes, Dr. Foster made a motion, seconded by Dr. Abernathy to approve the minutes as written. The motion carried.

**Conflict of Interest**

Ms. Armstrong reviewed the conflict of interest policy statement with the board which details the department's policy on conflicts of interest. Ms. Armstrong asked the board members to disclose any conflict of interest they may have prior to contested cases or any other legal proceedings to determine if there is a conflict of interest.

### **Report from Nicole Armstrong, Advisory Attorney**

Ms. Armstrong said Rule 1045-2-.01, .05 and .13 regarding inactive licensees performing volunteer work and PCs/PLLCs become effective August 24, 2004.

Ms. Armstrong said Rule 1045-2-.10 orders of modification and compliance, Rule 1045-2-.02, application review process, and Rule 1045-2-.01, .09, .11 and .14 fee increase, release of contact lens prescriptions and patient records retention are in the Attorney General's Office for review.

Ms. Armstrong stated there are two open cases in the Office of General Counsel but no cases are scheduled for presentation at this meeting.

### **Investigative Report**

Ms. Bell said five new complaints have been received and four complaints that have been closed. Ms. Bell stated one complaint was closed with no action and three with letters of concern.

### **Disciplinary Report**

Ms. Bell reviewed the disciplinary report stating one practitioner is currently being monitored. Ms. Bell invited the board members to review the discipline summary which lists all optometrists who have had disciplinary action from 1983 to present.

### **Financial Report**

Ms. Bell stated the board has a \$6,649 deficit resulting from the Lens Crafter's case. Ms. Bell said if there are no other fees associated with that case the board should have a surplus in 2005.

Dr. Foster asked if the 6<sup>th</sup> Circuit in Cincinnati has ruled on this case. Ms. Armstrong said the 6<sup>th</sup> Circuit has not made a ruling on this case.

Ms. Bell said the new RBS system will be upgraded in the near future and the department will be moving to Metro Center the first of the year. Ms. Bell said all boards will help pay for the new RBS system and move. Ms. Bell discussed the proposed control substance data base which will help determine who is doctor shopping to obtain controlled substances.

Dr. Spivey asked if the board's 2005 sunset review will go before the legislature. Ms. Bell said the Comptroller's Office will submit a report of all boards which will include fiscal responsibility. Ms. Bell said the Government Operations Committee understands the length of time it takes to get rules passed and that the boards are working toward getting deficits eliminated.

### **Administrative Report**

Ms. Bell reviewed the administrative report from Sherry Owens. Ms. Bell said administration has a quality improvement program which has decreased the application process time from six months to 26 days.

Ms. Bell said the renewal process time is now five days which is due for the most part to online renewals.

Ms. Bell stated she and Ms. Maxwell are setting up a computer in their booth to show licensees how to renew online.

Ms. Armstrong said 23 licensees renewed online from April 27, 2004 and August 13, 2004.

Ms. Bell said there were 265 continuing education letters mailed, 232 certified mail cards returned and 215 who submitted continuing education data. Ms. Bell stated 82 of the 215 who submitted continuing education data was acceptable, leaving 133 that was not.

Upon discussion, the board asked the administrative staff to include higher civil penalties and additional hours for practitioners in non-compliance with the continuing education requirements.

#### **Report from Jerry Kosten, Rules Manager**

Mr. Bell said Mr. Kosten did not have any rules to bring before the board today. Ms. Bell stated the order of compliance rules is signed by the Attorney General and has gone to the Government Operations Committee.

#### **Discuss and consider the issuance of artistically designed wall licenses for those licensees with more than one office**

The board discussed the issuance of artistically designed wall licenses for practitioners with more than one office.

Ms. Armstrong said the statute states practitioners can get a duplicate wall license if their license is lost or destroyed.

Mr. Hendrickson said he is interested in requiring that a license be displayed at all offices.

#### **Discuss and consider appointing ARBO as an authorized agent for the board**

Ms. Armstrong asked if the board has the authority to designate an association to do administrative work for the board.

Mr. Hendrickson said ARBO is trying to be established as a clearing house and requested this discussion be tabled to the next meeting for Dr. Richt to discuss.

#### **Discuss and take action, if necessary, in response to Attorney General Opinion regarding the regulation of cosmetic contact lenses.**

The board reviewed the Attorney General's Opinion No. 04-115 pertaining to the over-the-counter sale of non-corrective, decorative/cosmetic contact lenses.

The Attorney General opined that:

1. T.C.A. §63-8-1029120 and 63-8-113(A)(6) do not apply to over-the-counter, non-corrective, decorative/cosmetic contact lenses.
2. T.C.A. §63-8-114(4) does not authorize the Tennessee Board of Optometry to prohibit or regulate the over-the-counter sale of non-corrective, decorative/cosmetic contact lenses.
3. T.C.A. §63-1-134(a) does not authorize the Tennessee Board of Optometry to assess civil penalties against retailers of non-corrective, decorative/cosmetic contact lenses.

**Discuss and consider Disciplinary Guidelines and Public Chapter 575 and appoint a consultant**

Ms. Bell said the disciplinary guidelines were developed as a result of an audit by the Comptroller's Office. Ms. Bell said the guidelines are for all board that are similar.

Upon review, Dr. Abernathy made a motion, seconded by Dr. Spivey, to adopt the guidelines as written. The motion carried.

In review of Public Chapter 575 which allows independent reviewers to request medical records when determined necessary in aid of a verified complaint or required survey or inspection that requires production of the records for their resolution.

Dr. Abernathy and Dr. Hendrickson elected Tommy Ducklow, O.D., and Steve Malone, O.D. for the board's independent reviewers.

**Review Correspondence**

Dr. Hendrickson reviewed a letter from Dr. \_\_\_\_ stating he has completed the injectable course and residency with Dr. Talley and is requesting an injectable certification. Dr. Spivey made a motion, seconded by Dr. Foster, to issue Dr. \_\_\_\_ an injectable certification. The motion carried.

The board reviewed a letter from **Dr. Richard Ballard** requesting a waiver of the 2002 continuing education hours he failed to complete due to illness. Upon discussion, Dr. Abernathy made a motion, seconded by Dr. Hendrickson, to follow the policy regarding continuing education and request Dr. Ballard to comply with the policy statement, including the \$100 fine. The motion carried.

**Discuss and consider the board presenting continuing education courses**

Dr. Foster stated the board should have the option to present continuing education courses. Ms. Armstrong said pursuant to the statute the board can present continuing education courses.

Ms. Armstrong said if there is a fee for the course it may have to go out for bid. Ms. Armstrong said she would look at the different options and report back to the board.

Upon discussion, Dr. Foster made a motion to offer continuing education in injectable and CPR certification. The motion carried.

### **Discuss and consider adopting a policy regarding contact lenses**

Ms. Armstrong stated she draft a policy statement regarding the Fairness to Contact Lens Consumers Act for the board's review. Ms. Armstrong said the policy statement states the release of the contact lens prescription by an optometrist must meet the general requirements of the new federal law and rules and that an optometrist may require a new examination and contact lens fitting examination if he/she is being asked to release or verify a prescription that has expired. Dr. Foster made a motion, seconded by Dr. Spivey, to adopt the policy statement as written. The motion carried.

### **Schedule Board Meeting Dates for 2005**

The board scheduled the following dates for the 2005 board meetings:

January 26, 2005

March 9, 2005

July 22, 2005

November 30, 2005

### **Discuss and consider ratification of newly licensed**

Dr. Foster made a motion, seconded by Dr. Abernathy, to ratify the following newly licensed optometrists:

**Kemily T. Alexander**  
**Baharak Asefzadeh**  
**Bryan Bell**  
**Heather A. Borgon**  
**Cory Bosanko**  
**Jeffery D. Brown**  
**Heather K. Brown-Conner**  
**Sara Bustamante**  
**George Butterworth**  
**Katherine Carrick**  
**Ashley Cohorn**  
**Paul E. Collins**  
**Brett T. Dawson**  
**Christa Dawson**  
**Michael T. Dorkowski**  
**Matthew T. Drew**

**Mindabeth Greenberg**  
**Joel Halpern**  
**Jonathan Hamer**  
**Julie Henry**  
**Dorothy Hitchmoth**  
**Karmen Holdinghausen**  
**Krista Jagoda**  
**John Johnson**  
**Charles Kinnaird**  
**Melissa Knous**  
**Charles Krebs**  
**Richard Landers**  
**Anna Lawrence**  
**Ralph Levoy**  
**Brandi Long**  
**Paul Marescalchi**  
**Jennifer Martin**  
**Kelly Martin**  
**Nicole Miesner**  
**Matthew Miller**  
**Matthew Mosteller**  
**Artee Nanji**  
**Jason Nash**  
**Sima Gupta Neal**  
**Larry Nicholson, II**  
**Faris Ohan**  
**Kimberly Parks**  
**Luis Perez**  
**Diane Redding**  
**Katherine Sanders**  
**Todd Schultz**  
**Eric Selander**  
**Jasmine Shipp**  
**Robert Shipp, V**  
**Carla Shorter**  
**Patric Shorter**  
**Carrie Suchman**  
**Amanda Weiss**  
**Jonathan Wilson**  
**Christina Wood**  
**Bhavani Yedulapuram**

The motion carried.

Upon review of the application of **Peter Mueller**, Dr. Spivey made a motion, seconded by Dr. Foster, to delay Dr. Mueller's application for further explanation of the Wisconsin licensure

requirements, explanation of the three examinations he took and whether or not he is fully licensed in Wisconsin and complying with Wisconsin's continuing education requirements. The motion carried.

Upon review of the practice name change for **Blountville Family Eyecare** by Mark A. Bowers, Dr. Foster made a motion, seconded by Dr. Spivey, to approve the change as requested. The motion carried.

With no other board business to conduct, Dr. Abernathy made a motion, seconded by Dr. Foster, to adjourn at 12:18 p.m. The motion carried.

SO/G4014351/OPTmin